(4)

No. 01-981

Supreme Court, U.S.
FILED
MAR 11 2002
CLERK

In The

Supreme Court of the United States

WARD S. LARKIN,

Petitioner,

vs.

MICHAEL JOHNSON AND COMPUSA, INC.,

Respondents.

On Petition For Writ Of Certiorari To The Texas Court Of Appeals For The Fourteenth Judicial District Of Texas

SUPPLEMENTAL BRIEF FOR THE PETITIONER

WARD LARKIN
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Pro Se Petitioner

17pp

TABLE OF AUTHORITIES

Page

CASES

Davis v. Texas, 956 S.W.2d 555 (Tex. Crim. App. 1997) 3

French v. Texas, 572 S.W.2d 934 (Tex. Crim. App. 1977) 3

Prieto Bail Bonds v. Texas, 994 S.W.2d 316 (Tex. App. – El Paso 1999, pet. ref'd) 3

Ruiz v. Estelle, 679 F.2d 1115 (5th Cir. Tex. 1982) 4

Wilson v. Texas, 977 S.W.2d 379 (Tex. Crim. App. 1998) 3

STATUTES AND RULES

Tex. Gov't Code Ann. § 74 (West 1999) 1

Tex. Gov't Code Ann. § 74.003 (West 1999) 2

Tex. Gov't Code Ann. § 75 (West 1999) 1

Tex. Gov't Code Ann. § 75.002 (West 1999) 2

Tex. Gov't Code Ann. § 75.003 (West 1999) 2

Tex. Gov't Code Ann. § 552 (West 1999) 3

Tex. R. Jud. Admin. Rule 12 (West 2001) 3

FEDERAL CONSTITUTIONAL PROVISIONS

U.S. Const. art. VI, cl. 3 1

U.S. Const. amend. VIII 4

U.S. Const. amend. XIV 4

TABLE OF AUTHORITIES – Continued

Page

TEXAS STATE CONSTITUTIONAL PROVISIONS

Tex. Const. art. XVI, § 1(a) (Vernon's Ann. 1999) 1

Tex. Const. art. XVI, § 1(b) (Vernon's Ann. 1999) 1

Tex. Const. art. XVI, § 1(c) (Vernon's Ann. 1999) 1

Tex. Const. art. XVI, § 1(d) (Vernon's Ann. 1999) 1

Tex. Const. art. XVI, § 1(e) (Vernon's Ann. 1999) 1

Tex. Const. art. XVI, § 1(f) (Vernon's Ann. 1999) 1

OTHER AUTHORITIES

The Federalist No. 27, p. 177 (Mentor Book ed. 1961) (A. Hamilton) 5

SUPPLEMENTAL BRIEF FOR THE PETITIONER

Petitioner Ward Larkin just learned of constitutional violations that render judgment of the Texas 14th Court of Appeals void. When this case was submitted and argued before the Texas court of appeals, and when the Texas court of appeals handed down its decision, not one of the three justices on that panel had taken the oaths required by the Constitution of the United States and of the State of Texas.

U.S. Const. art. VI, cl. 3 provides that "all . . . judicial officers, both of the United States and of the several States, shall be bound by oath or affirmation, to support this Constitution". Tex. Const. art. XVI, § 1(a) obligates all elected officers, and Tex. Const. art. XVI, § 1(c) obligates all appointed officers, to take the Oath of Office before they may enter upon the duties of their offices. Additionally, Tex. Const. art. XVI, § 1(b) obligates all elected officers to sign a statement of elected officer (an "anti-bribery oath"), and Tex. Const. art. XVI, § 1(d) obligates all appointed officers to sign a statement of appointed officer (a similar, but not identical "anti-bribery oath"), before they may take their Oath of Office. The statement of elected officer [per Tex. Const. art. XVI, § 1(e)], and the statement of appointed officer [per Tex. Const. art. XVI, § 1(f)], must be filed with the Texas Secretary of State before the Oath of Office may be taken.

Justices with the Texas court of appeals are elected judicial officers, but visiting justices may be appointed to assist in disposing of cases. See Tex. Gov't Code Ann. §§ 74 and 75. On December 21, 2000 Senior Justices Norman Lee and Ross Sears and Former Justice Maurice

Amidei – the three members of the panel in this case, and each a formerly elected Texas 14th Court of Appeals justice – were ordered to sit by assignment with the Texas 14th Court of Appeals between January 1, 2001 and March 31, 2001 by Thomas R. Phillips, Chief Justice, Texas Supreme Court by his authority under Tex. Gov't Code Ann. §§ 74.003, 75.002, and 75.003. [See this brief's App. 3-5.] Although otherwise qualified, none of these three men signed, or filed with the Texas Secretary of State, a statement of appointed officer relating to the January 1, 2001 to March 31, 2001 judicial assignment. Nor did any of them take the required Oath of Office.

Specifically, Maurice Amidei signed his statement of appointed officer on April 16, 2001, which was filed with the Texas Secretary of State on April 18, 2001. [See this brief's App. 2.] He then signed his Oath of Office as a Former Appellate Justice on May 9, 2001 [See this brief's App. 1], over 7 weeks after the January 1, 2001 to March 31, 2001 judicial assignment had expired. Norman Lee signed his statement of appointed officer on June 22, 2000, which was filed with the Texas Secretary of State on June 29, 2000. [See this brief's App. 6.] He then signed his Oath of Office as a Senior Justice on July 13, 2000 [See this brief's App. 7], almost six months before the January 1, 2001 to March 31, 2001 judicial assignment began. Ross Sears signed his statement of appointed officer on June 9, 2000, which was filed with the Texas Secretary of State on June 12, 2000. [See this brief's App. 8.] He then signed his Oath of Office as a Senior Appellate Justice on June 28, 2000 [See this brief's App. 9], over six months before the January 1, 2001 to March 31, 2001 judicial assignment started.

Petitioner obtained the records included within this brief's appendix by filing public information requests under Tex. Gov't Code Ann. § 552 with Gwyn Shea, Texas Secretary of State, and filing judicial records requests under Tex. R. Jud. Admin. Rule 12 with 1) Olen Underwood, Presiding Judge, Texas 2nd Administrative Judicial Region[1]; 2) Scott Brister, Chief Justice, Texas 14th Court of Appeals; 3) Thomas R. Phillips, Chief Justice, Texas Supreme Court; and 4) Maurice Amidei, Norman Lee, and Ross Sears individually. Per the Constitution, Laws and Judicial Rules of Texas, no other state agency or state officer should be in custody of the statements of appointed officer or the Oaths of Office for Maurice Amidei, Norman Lee or Ross Sears regarding their January 1, 2001 to March 31, 2001 judicial assignment.

The Texas courts have held that a judge is constitutionally disqualified if he or she hasn't taken the required oaths. *French v. Texas*, 572 S.W.2d 934, 939 (Tex. Crim. App. 1977) (on second motion for rehearing). The acts of a judge who is constitutionally disqualified are void, and may be challenged for the first time on appeal. See *Wilson v. Texas*, 977 S.W.2d 379, 380 n.3 (Tex. Crim. App. 1998); *Davis v. Texas*, 956 S.W.2d 555, 559 (Tex. Crim. App. 1997). Furthermore, former or retired judges assigned to judicial office by Tex. Gov't Code Ann. §§ 74 and 75 are appointed judicial officers, and they must sign a new statement of appointed officer and take a new Oath of Office for each new judicial assignment. See *Prieto Bail Bonds v. Texas*, 994 S.W.2d 316, 318-21 (Tex. App. – El Paso 1999,

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[1] The Texas 2nd Administrative Judicial Region oversees the Texas 14th Court of Appeals.

pet. ref'd). Petitioner recognizes that these citations reference only criminal cases. However, the rights of a civil litigant to present his or her case before a constitutionally qualified tribunal are equally protected under U.S. Const. amend. XIV.

Because Maurice Amidei didn't take his required Oath of Office as an appointed judicial officer until May 9, 2001, 39 days after the January 1, 2001 to March 31, 2001 judicial assignment had expired, he was constitutionally disqualified to act in this case. This case was submitted and argued on February 14, 2001, and judgment was rendered on March 22, 2001. Similarly, because Norman Lee and Ross Sears didn't take a new Oath of Office for the January 1, 2001 to March 31, 2001 judicial assignment, they were also constitutionally disqualified to act in this case.

No government officer is above the law. *Ruiz v. Estelle*, 679 F.2d 1115, 1163 (5th Cir. Tex. 1982) (holding that Texas statewide prison conditions were in violation of U.S. Const. amend. VIII) concluded its lengthy opinion on that extremely serious issue by explaining how important it is for state officials in general, and the judiciary in particular, to swear to defend the U.S. Constitution: "The Federal Constitution is a charter for all officials, federal and state. All those who wield the power of the sovereign must be equally obedient to its commands and faithful in ensuring its protections. They take the same oath we do – to uphold and to defend it."

Moreover, the fundamental philosophy of the American constitutional form of representative government holds to the principle that the Constitution of the United

States of America is the supreme law of the land. Every officer of every state owes it his or her sworn obedience:

> It merits particular attention in this place, that the laws of the Confederacy, as to the *enumerated* and *legitimate* objects of its jurisdiction, will become the SUPREME LAW of the land; to the observance of which all officers, legislative, executive, and judicial, in each State, will be bound by the sanctity of an oath. Thus the legislatures, courts, and magistrates, of the respective members, will be incorporated into the operations of the national government *as far as its just and constitutional authority extends;* and will be rendered auxiliary to the enforcement of its laws. *The Federalist* No. 27, p. 177 (Mentor Book ed. 1961) (A. Hamilton).

CONCLUSION

For the foregoing reasons, Petitioner asks the Court to remand for appropriate findings of fact before making a determination on the Petition for Writ of Certiorari.

Respectfully submitted,

WARD LARKIN
Pro Se Petitioner

15327 Pebble Bend Drive
Houston, TX 77068-1839
Tel.: 281-444-3840
Fax: 281-895-9939

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, Maurice Eneas Amidei, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Former Appellate Justice of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

/s/ Maurice Eneas Amidei
Affiant

SWORN TO and subscribed before me by affiant on this 9th day of May, 2001.

/s/ Rebecca McMahon
Signature of Person
Administering Oath

/s/ REBECCA McMAHON
Printed Name

Notary Public
Title

[SEAL] REBECCA MCMAHON
NOTARY PUBLIC, STATE OF TEXAS
MY COMMISSION EXPIRES
JULY 9, 2002

[SEAL]

STATEMENT OF APPOINTED OFFICER

(Pursuant to Tex. Const. art. XVI. § 1(d), amended 1989)

(Filed in the Office of Secretary of State Apr. 18, 2001
Statutory Filings Division Statutory Documents)

I, Maurice Eneas Amidei, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

Maurice Eneas Amidei
Affiant's Signature

Assigned Former Justice	Houston, Harris County, Texas
Position to Which Appointed	City and/or County

SWORN TO and subscribed before me by affiant on this 16th day of April, 2001.

/s/ James Dukett
Signature of Person Authorized to Administer Oaths/Affidavits

/s/ James Dukett	Notary
Printed Name	Title

[SEAL] JAMES A. DUKETT
Notary Public
STATE OF TEXAS
My Comm. Exp. 01-31-2005

[SEAL]

ORDER

December 21, 2000

TO:

Chief Justices, Courts of Appeals
Hon. Maurice Amidei
Hon. Eric Andell
Hon. Charles Baird
Hon. Bill Bass
Hon. Shirley Butts
Hon. Charles Campbell
Hon. Bill Cannon
Hon. Bobby L. Cummings
Hon. Carl Dally
Hon. Tom G. Davis
Hon. Bob Dickenson
Hon. Carlton B. Dodson
Hon. Joe L. Draughn
Hon. F. Lee Duggan, Jr.
Hon. Frank G. Evans
Hon. David Farris
Hon. John Hill
Hon. Camille Hutson-Dunn
Hon. Noah Kennedy
Hon. Ward L. Koehler
Hon. Norman Lee
Hon. Frances Maloney
Hon. Austin McCloud
Hon. Frank McDonald
Hon. Chuck Miller
Hon. John F. Onion, Jr.
Hon. H. Brian Poff
Hon. John Powers
Hon. Frank Price
Hon. Charles L. Reynolds
Hon. David Richards
Hon. Sam Robertson
Hon. Barbara Rosenberg
Hon. Ross Sears
Hon. Jackson B. Smith, Jr.
Hon. Ruby Sondock
Hon. Rose Spector
Hon. Annette Stewart

FROM: Chief Justice Thomas R. Phillips

RE: Assignments of Judges to Courts of Appeals

Pursuant to the authority vested in me as Chief Justice of the Supreme Court of Texas by §§ 74.003, 75.002, and 75.003 of the Texas Government Code, the following assignments are made, effective January 1, 2001 through March 31, 2001:

These seventeen assignments are made primarily for the Target Docket Reduction Program (Rider 4 to the FY 2000-2001 appropriation to the Supreme Court by H. B. 1, 76th Legislature, Regular Session):

To the First Court of Appeals: F. Lee Duggan, Jr., Frank C. Price, and Jackson B. Smith, Jr.;

To the Fifth Court of Appeals: Carlton B. Dodson, David Farris, H. Bryan Poff, Jr., Barbara Rosenberg, Rose Spector, and Annette Stewart.

To the Fourteenth Court of Appeals: Maurice Amidei, Eric Andell, Bill Cannon, Joe L. Draughan, Camille Hutson-Dunn, Norman Lee, Sam Robertson, and Ross A. Sears.

These five assignments are made with direction that these judges be assigned primarily to panels that consider cases in which oral argument has been waived:

To the Fifth Court of Appeals: Bill Bass, Shirley Butts, Charles Campbell, Ward L. Koehler, and Chuck Miller.

These seventeen assignments are made for the type of tasks and volume of work as may be mutually determined by the assigned judges and the Chief Justice of the court to which assigned:

To the First Court of Appeals: Frank G. Evans
To the Second Court of Appeals: John Hill
To the Third Court of Appeals: Carl Dally, Tom G. Davis, John F. Onion, Jr., and John Powers.
To the Fifth Court of Appeals: Frances Maloney
To the Seventh Court of Appeals: Charles L. Reynolds

To the Tenth Court of Appeals: Bobby L. Cummings, Frank G. McDonald, and David Richards
To the Eleventh Court of Appeals: Bob Dickenson and Austin McCloud
To the Thirteenth Court of Appeals: Noah Kennedy
To the Fourteenth Court of Appeals: Maurice Amidei, Charles Baird and Ruby Sondock

All of these assignments shall continue for such period of time as may be necessary to complete consideration of the cases heard and to pass on motions for rehearing relating thereto.

These assignments do not preclude others being made.

/s/ Thomas R. Phillips
Thomas R. Phillips
Chief Justice

December 21, 2000

(SEAL)

STATEMENT OF APPOINTED OFFICER

(Pursuant to Tex. Const. art. XVI, §1(d), amended 1989)

(Filed in the Office of Secretary of State Jun. 29 2000
Statutory Filings Division Statutory Documents)

I, NORMAN R. LEE, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

/s/ Norman R. Lee
Affiant's Signature

Senior Justice	Houston, Harris
Position to Which Appointed	City and/or County

SWORN TO and subscribed before me by affiant on this 22nd day of June, 2000.

/s/ Charlene A. Mitchell
Signature of Person Authorized to Administer Oaths/Affidavits

/s/ Charlene A. Mitchell	NOTARY
Printed Name	Title

[SEAL]
CHARLENE A. MITCHELL
NOTARY PUBLIC,
STATE OF TEXAS
MY COMMISSION EXPIRES
AUG. 12, 2002

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, NORMAN R. LEE, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of SENIOR JUSTICE of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

/s/ Norman R. Lee
Affiant

SWORN TO and subscribed before me by affiant on this 13th day of July, 2000.

/s/ Sam Alfano
Signature of Person
Administering Oath

(Seal)

/s/ Sam Alfano
Printed Name

Municipal Court Judge City of
Houston Harris County, TX.
Title

(SEAL)

STATEMENT OF APPOINTED OFFICER

(Pursuant to Tex. Const. art. XVI, §1(d), amended 1989)

(Filed in the Office of Secretary of State Jun. 12 2000
Statutory Filings Division Statutory Documents)

I, Ross A. Sears, do solemnly swear (or affirm), that I have not directly or indirectly paid, offered, promised to pay, contributed, or promised to contribute any money, or valuable thing, or promised any public office or employment, as a reward to secure my appointment or confirmation thereof, so help me God.

/s/ Ross A. Sears
Affiant's Signature

Senior Appellate Justice	Houston, TX
Position to Which Appointed	City and/or County

SWORN TO and subscribed before me by affiant on this 9th day of June, 2000.

/s/ Stephanie J. Billings
Signature of Person Authorized to Administer Oaths/Affidavits

/s/ Stephanie J. Billings	Notary Public
Printed Name	Title

[SEAL]
STEPHANIE J. BILLINGS
NOTARY PUBLIC,
STATE OF TEXAS
MY COMMISSION EXPIRES
FEB. 1, 2003

In the name and by the authority of

The State of Texas

OATH OF OFFICE

I, Ross A. Sears, do solemnly swear (or affirm), that I will faithfully execute the duties of the office of Senior Appellate Justice of the State of Texas, and will to the best of my ability preserve, protect, and defend the Constitution and laws of the United States and of this State, so help me God.

/s/ Ross A. Sears
Affiant

SWORN TO and subscribed before me by affiant on this 28th day of June, 2000.

/s/ Dana C. Thomas
Signature of Person
Administering Oath

[SEAL] DANA C. HARVEY
NOTARY PUBLIC
State of Texas
Comm. Exp. 08-07-2001

/s/ Dana C. Thomas
Printed Name

Notary
Title